general repair work that the plaintiffs may require them to carry out to the vessel and to supply the necessary materials at reasonable prices.

The expression "general repair work" is used by the plaintiffs in their statement of claim as being the nature of the work which they allege the defendants had agreed to execute to the vessel. Those words are not to be found in the plaintiffs' first telex message dated October 3. There was no evidence either of trade custom or normal practice of the trade that offering drydock space for a vessel in response to an inquiry for drydock space for a vessel for "ordinary drydocking and screwshaft survey" is understood to mean an offer to execute whatever general repair work that the owners of the vessel may require to be done. Nor was there any evidence that the defendants so understood it. The expert witnesses who gave evidence at the trial were not questioned at all as to what a shipyard would have understood when asked to provide "drydock space for ordinary drydocking and screwshaft survey". Indeed the evidence of the plaintiffs' expert witness was that by the third telex message the plaintiffs were not ordering the work of ordinary drydocking and screwshaft survey to be carried out and that the first telex message was merely an inquiry by the plaintiffs whether a drydock was available and was not an order to the defendants to carry out ordinary drydocking and screwshaft survey.

It follows, in our judgment, that on the true construction of the three telex documents, although there must have been an intention by both parties, continuing up to the arrival of the vessel at the shipyard, to make a contract, the parties were not *ad idem* on the terms which they, on the arrival of the vessel, regarded as being required in order that a contract should come into existence. In our opinion while it is clear that the parties intended to make a contract for such work as would be required during ordinary drydocking and to enable a screwshaft survey to be carried out, the exact terms were left for future agreement.

Furthermore, in our opinion there was no evidence from which the court could, assuming there was a concluded contract by the defendants to provide drydock space for and to execute "general repair work" on the plaintiffs' vessel, import a term by implication that the defendants would "provide in dock, disconnect the vessel's propeller and draw in the shaft to a convenient place where it can be examined and to assist the surveyor to measure the distance between the shaft and stern bush and to renew part or the whole of the bushing, if necessary, and rewood the stern bush if necessary". To imply such a term on the evidence before us would be to make an entirely different contract for the parties. It has often been said terms are not to be implied merely because they are desirable, or merely because the parties, if they had considered the question, would probably as reasonable men have agreed such terms. A term can only be implied where it is necessary in order to give "business efficacy" to the contract. In the present case the concluded contract was merely a contract binding the defendants to accept the plaintiffs' vessel in drydock for a period of days around October 16/17, 1973 for ordinary drydocking and screwshaft survey purposes. The defendants could not have known, nor was there any evidence that they in fact knew, on receipt of the third telex message that the plaintiffs were obliged for classification purposes to carry out a screwshaft survey for their vessel. Even though it may be necessary to give business efficacy to imply a term that the defendants agreed to execute such repairs as are ordinarily required to a vessel when it drydocks we are of the opinion that there was no such necessity to imply a term as particularised in the plaintiffs' further and better particulars. Indeed the evidence was that the work entailed to enable a screwshaft survey to be carried out does not fall within the understood meaning of work normally done to a vessel during "ordinary drydocking".

For these reasons the appeal is allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*

CHIA BENG CHYE v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) March 5, 1980]

[Singapore — Criminal Appeal No. 13 of 1978]

Misuse of Drugs — Trafficking in 111.96 gms of diamorphine — Arrest by customs officer — Whether customs officer had power to record statement from accused — Misuse of Drugs Act, 1973, ss. 3(a), 21 to 23 — Criminal Procedure Code (Cap. 113) s. 121(6) & (8).

Customs — Trafficking in diamorphine — Arrest by customs officer — Whether customs officer had power to record statement from accused — Misuse of Drugs Act, 1973, ss. 3(a), 21 to 23 — Criminal Procedure Code (Cap. 113), s. 121(6) & (8).

Criminal Law and Procedure — Customs officer — Whether has power to record statement from accused — Criminal Procedure Code (Cap. 113), s. 121(6) & (8).

The appellant in this case was observed by five customs officer led by Assistant Superintendent of Customs Cheong handing a white plastic bag to one Koh. The latter was finally arrested and the bag which contained 26 packets of brownish substance were analysed by the Senior Scientific Officer of the Department of Scientific Services and were found to contain 111.96 gms of diamorphine.

The trial judges held that as it was the appellant who gave the plastic bag containing the diamorphine to Koh, and, having regard to the definition of "traffic" in section 2 of the Act, a *prima facie* case had been made out against him under section 3(a) of the Misuse of Drugs Act 1973. The trial judges accepted the voluntary statement the appellant gave to Assistant Superintendent of Customs Cheong on the night of his arrest. The statement was taken in writing by Assistant Superintendent of Customs Cheong under section 121(6) of the Criminal Procedure Code. The appellant contended that as an officer of customs is not a police officer, Assistant Superintendent Customs Cheong had no power to record the statement from the appellant under the provisions of the Criminal Procedure Code and that the statement should not have been admitted in evidence. It was also submitted by the appellant that a Scientific Officer is not a "Government Chemist", a certificate given by the former is not a valid certificate under section 14 of the Misuse of Drugs Act 1973 that *prima facie* the 26 packets contained 111.96 gms of diamorphine.

Held, dismissing the appeal: (1) an officer of customs has a duty to investigate into the facts leading to the arrest and seizure. If, after investigation, the facts so warrant he must charge the person in court for an offence under the Misuse of

Drugs Act, for arrest is the first step of the judicial process in the administration of justice;

(2) the powers given to officers of customs to arrest, search, seize and detain under the old Ordinances, and in the Misuse of Drugs Act, are similar to the powers given to police officers under the Criminal Procedure Code;

(3) given that an officer of customs has a duty to investigate and charge offenders under the Misuse of Drugs Act, Assistant Superintendent of Customs Cheong in this case was empowered under section 121(6) read with section 121(8) of the Criminal Procedure Code to record a statement from the appellant;

(4) a certificate purporting to be signed by the Senior Scientific Officer complied with section 14 of the Misuse of Drugs Act 1973; it must on the face of it also show that the Scientific Officer is a chemist in the service of Government as a Scientific Officer can be a qualified officer other than a chemist.

Cases referred to:-

(1) *Wiltshire* v. *Barrett* [1966] 1 Q.B.D. 312, 325.

(2) *Dallison* v. *Caffery* [1965] 1 Q.B.D. 348, 367.

CRIMINAL APPEAL.

Francis T. Seow (*Roop Parkash* with him) for the appellant.

E.C. Foenander (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Sinnathuray J. (delivering the judgment of the Court): At about 1 p.m. on May 23, 1977, five Customs Officers led by Assistant Superintendent of Customs Cheong Wah Yong (ASC Cheong) were in a Customs staff car travelling along Beach Road towards Customs House in Maxwell Road. When they approached the Golden Mile Shopping Complex, they spotted a Volvo car, No. E 2237U parked on the left-hand side of the road in front of the Complex. As they had information concerning this car, they stopped their car about 20 metres behind the Volvo car and kept observation of it. The appellant was in the driver's seat. He was alone.

About 15 minutes later, a Fiat car, No. EA 6282Z, came and stopped immediately behind the Volvo car. The driver of the car was Koh Hoon Seng (Koh). The appellant alighted from his car and walked towards the Fiat car. He was carrying a rolled up white plastic bag. He walked up to Koh and handed the white plastic bag through the front driver's window. He then returned to his car and drove off.

Koh then drove his car another 50 metres and stopped in front of the Golden Theatre. The Customs party in turn drove forward, parked their car a little ahead of the Fiat car and continued their observation. Koh got out of the car. He went to the lobby of the Golden Theatre and bought some cinema tickets. He then returned to his car and got into the driver's seat. Before he could drive off, ASC Cheong and his men closed in on him.

ASC Cheong identified himself. Koh was ordered to get into the rear seat of the car. ASC Cheong searched the car. Under the front driver's seat he recovered the white plastic bag. When asked about the bag, Koh said that it contained "peh hoon" meaning "white powder" which is how heroin is described in Chinese by drug takers and drug traffickers. ASC Cheong found in the plastic bag two small parcels. In them were altogether twenty-six plastic packets filled with brownish substance. Koh was arrested, and he and his car were taken to Customs House.

Subsequently, the twenty-six packets of brownish substance were analysed by the Senior Scientific Officer of the Department of Scientific Services and found to contain 111.96 grams of diamorphine, a controlled drug, under the Misuse of Drugs Act, 1973 (the Act).

On these facts the trial judges held that as it was the appellant who gave the plastic bag containing the diamorphine to Koh, and, having regard to the definition of "traffic" in section 2 of the Act, a *prima facie* case had been made out against him on the charge of, not being authorised by the Act or the regulations made thereunder, he did traffic in a controlled drug, an offence punishable under section 3(a) of the Act.

Moreover, the trial judges accepted the voluntary statement the appellant gave to ASC Cheong on the night of his arrest. The statement was taken down in writing by ASC Cheong under section 121(6) of the Criminal Procedure Code (the Code). The complaint is that the trial judges had erred in law in admitting as evidence that voluntary statement.

Put shortly, the submission for the appellant was that as an officer of customs is not a police officer, ASC Cheong had no power to record the statement from the appellant under the provisions of the Code. In the context of this proposition, counsel for the appellant referred us to the powers given to an officer of customs in sections 21 to 23 of the Act which read as follows: —

"21.—(1) An officer of the Bureau, a police officer not below the rank of Assistant Superintendent of Police or any police officer authorized by him or any senior officer of customs may at any time —

(a) without a warrant enter and search any place or premises in which he reasonably suspects that there is to be found a controlled drug or article liable to seizure;

(b) search any person found in such place or premises; and

(c) seize and detain any controlled drug found in such place or premises, or any article liable to seizure.

(2) For the purpose of exercising his power under this section an officer may, with such assistance as he deems necessary, break open any door, window, lock, fastener, floor, wall, ceiling, compartment, box, container or any other thing.

22.—(1) An officer of the Bureau, a police officer, an officer of customs, or any special police officer or member of the Vigilante Corps authorised in writing by a police officer not below the rank of Assistant Superintendent of Police, may arrest without a warrant any person who has committed or whom he reasonably suspects to have committed an offence under this Act.

(2) Any person so arrested shall, together with any article which is liable to seizure, be taken to the Central Narcotics Bureau, a police station or a customs station and may be searched.

(3) No female shall be searched under this Act except by a female officer.

(4) An officer making an arrest under this section may seize and detain any article liable to seizure.

23.—(1) An officer of the Bureau, a police officer or an officer of customs may —

(a) stop, board and search any ship, hovercraft, aircraft, vehicle or train if he has reason to suspect that there is therein any controlled drug in contravention of this Act or any article liable to seizure;

(b) search any person in such ship, hovercraft, aircraft, vehicle or train; and

(c) search any person arriving in Singapore or about to depart from Singapore.

(2) An officer may seize and detain any controlled drug or article liable to seizure as a result of any search under this section, and may seize and detain any ship, hovercraft, aircraft, vehicle or train which has been used in the commission of or in connection with an offence under this Act."

It was submitted that these sections show that the powers given to an officer of customs under the Act limit such an officer when he arrests a person for an offence under the Act to hand the person over to a police officer or to a narcotics officer of the Central Narcotics Bureau. It follows, and so the submission was, that an officer of customs has no power to carry out any investigations relating to drug offences or to charge a person for any such offence under the Act. Alternatively, it was submitted that an officer of customs may charge a person for an offence under the Act, but that he had no power to record a statement under the provisions of the Code. It was therefore contended that ASC Cheong had illegally recorded the statement which should not have been admitted in evidence.

In considering that submission, it is of assistance to look at the law before the enactment of the Act. The starting point is Ordinance No. IV of 1870, an Ordinance "for collecting a Revenue of Excise on Spirituous Liquors and Intoxicating Drugs" (See: *Harwoods* Vol. 1, Acts and Ordinances of the Colony of the Straits Settlement page 146). At that time, in the dim history of modern Singapore, the farming of opium was legal, and a person given that privilege was known as an "Opium Farmer". The Ordinance made provisions, *inter alia*, for the control and licensing of opium farmers, the sale of chandu and opium, and penal provisions for dealing in contraband. Revenue officers, the present day customs officers, were appointed to enforce the Ordinance and police officers were given the powers of revenue officers.

Then came "The Opium Ordinance, 1906" which repealed and consolidated a number of previous Ordinances. It made no material changes to the law for the collection of revenue of excise on opium. What is of interest in this appeal is that it was in this Ordinance that revenue and police officers were given powers similar to those provided in sections 21 to 23 of the Act (See: sections 51 to 53 of the Ordinance).

Then in 1909, the Chandu Revenue Ordinance repealed the Ordinance of 1906 and gave "the Government the exclusive right to prepare and sell chandu". Under the Ordinance, the farming of opium ceased and opium farmers made over to the superintendent of chandu at market value all opium and chandu in their possession, and all other things used by them in the manufacture and preparation of chandu. The powers vested in revenue officers under the Ordinance of 1906 were re-enacted (See: Cap. 223 of the 1936 Edition of the Laws of the Straits Settlement).

It was not till after the Second World War that the Opium and Chandu Proclamation (No. 43 of 1946) issued by the British Military Administration prohibited the sale and purchase of opium and chandu. In 1951 the Proclamation was repealed and in its place there was enacted the Dangerous Drugs Ordinance (No. 7 of 1951) which was in the Statute Book as Chapter 137 of the 1955 Edition of the Laws of the Colony of Singapore, and then as Chapter 151 of the 1970 Revised Edition of our Statutes, of which the Act is the successor. For our purpose, it is sufficient to note that in Part VI of each of these Ordinances are provisions giving officers of customs powers that were vested in them in the previous Ordinances and are identical to those in sections 21 to 23 of the Act.

So then, for over a hundred years, revenue officers (later officers of customs) together with police officers have administered the laws relating to dangerous drugs. Under the powers given to them, officers of customs arrested and investigated into offences against those laws; and they also prosecuted offenders (as they do today in our Subordinate Courts) for the Customs Department. If what is submitted for the appellant is correct, everything that officers of customs have been doing for the many decades has been unlawful.

In our judgment, the submission is without substance. It altogether ignores the power given to an officer of customs who arrests a person without a warrant to take the person, together with any article seized, to a customs station. At the station the person and the article may be searched. It follows therefore that an officer of customs has a duty to investigate into the facts leading to the arrest and seizure. If, after investigation, the facts so warrant he must charge the person in court for an offence under the Act, for arrest is the first step of the judicial process in the administration of justice. On the other hand, if there is no sufficient case for detaining the person, the officer of customs must release him immediately. (See *Wiltshire* v. *Barrett*[1] *per* Lord Denning M.R. at page 325.)

The powers given to officers of customs to arrest, search, seize and detain under the old Ordinances, and in the Act, are similar to the powers given to police officers under the Criminal Procedure Code, and are not dissimilar from those exercised by a 'constable' in England in effecting arrest of a person suspected of committing a felony. In the case of *Dallison* v. *Caffery*[2] Lord Denning M.R. at page 367 said:

"When a constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says he was working, for there he may find persons to confirm or refute his alibi. The constable can put him up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice. By which I mean, of course, justice not only to the man himself but also to the community at large. The measures must, however, be reasonable."

These are some of the measures that officers of customs have been executing historically in accordance with the law. Now under the Act, in addition to officers of customs and police officers, there are narcotics officers and a new law enforcement agency, the Central Narcotics Bureau. But the Act has not derogated from any of the powers of officers of customs or deprived the Customs Department of the powers of enforcing the Act.

Next, given that an officer of customs has a duty to investigate and charge offenders under the Act, in our judgment, ASC Cheong was empowered under section 121(6) read with section 121(8) of the Code to record a statement from him. The trial judges having held that it was a voluntary statement admitted it in evidence.

Finally, there was another submission that a Scientific Officer is not a "Government chemist", and a certificate given by the former is not a valid certificate under section 14 of the Act that *prima facie* the twenty-six packets contained 111.96 grams of diamorphine. The short answer is the Senior Scientific Officer gave evidence at the trial, and the totality of his evidence was not challenged by the appellant who was represented by counsel. Therefore, to come to this court and take an objection to the admissibility of the report tendered at the trial, referred to in section 14 of the Act as "a certificate", is, in our judgment, devoid of merit. However, to put the matter beyond doubt, even if the Senior Scientific Officer had not given evidence, we are satisfied that a certificate purporting to be signed by him complies with section 14 of the Act. As regards a certificate of a Scientific Officer, it must on the face of it show that the Scientific Officer is a chemist in the service of Government as a Scientific Officer can be a qualified officer other than a chemist (See: *Gazette* Notification No. S46 of 1977).

For all these reasons the appeal is dismissed.

Appeal dismissed.

Solicitors: *Francis T. Seow.*

LIAN FUAT TRADING (PTE.) LTD. v. COLLECTOR OF LAND REVENUE, LAND OFFICE

[Appeals Board (Land Acquisition) (Sinnathuray J.) November 14, 1979]

[Singapore — A.B. No. 74 of 1977]

Land Acquisition — Compensation — Matters for consideration — Comparables — Whether award should be calculated on basis that either appellant could give vacant possession or not — Land Acquisition Act (Cap. 272), s. 33(1)(a) & (5)(d).

The land in question was purchased by the appellant on May 28, 1975 with the existing tenants on the premises. The appellant was a company and was a family business. The company bought the property from six vendors who were all brothers of the managing director of the company. The purchase price of this property as stated in the conveyance was $51,000. The property was acquired within two years after the purchase of this property. In making the award the Collector approached the valuation of this property on the market value, and to arrive at the market value he used comparables, and in using comparables he specifically ignored the said sale, as it was an internal transfer.

There were two issues involved in this case: (a) whether the Collector was entitled to invoke section 33(5)(d) of the Land Acquisition Act in the grounds of award and annexures thereto, and (b) whether the award should be calculated on the basis that either the appellant could give vacant possession or that he was in no position to give vacant possession.

Held: (1) the court disagreed with the submission of the Collector that reference to market value in paragraph "d" of his grounds of award* related to the market value used in arriving at the award on another property, not a subject of appeal, and this market value was not used in relation to the land in question. Section 33(5)(d) was not invoked in the making of the award in this appeal;

(2) in this case the award should be calculated on the basis that the appellant could not give vacant possession and that it was at $155 per sq. ft. There would be no order as to costs.

APPEALS BOARD.

H.T. Sam for the appellant.

Miss Tan for the respondent.

Sinnathuray J. (delivering oral judgment): In this appeal a legal issue was canvassed as to whether section 33 subsection (5) subsection (d) applies to the award made by the Collector in respect of Lot 18 TS II which I refer to as No. 80 Cecil Street. The facts are that 80 Cecil Street was purchased by the appellant on May 28, 1975, with the existing tenants on the premises. The appellant is a company and is a family business. The company bought the property from six vendors who were all brothers of the managing director of the company. The purchase price of this property as stated in the conveyance is $51,000. The property was acquired within two years after the purchase of this property. The legal issue, it is said, is whether in the circumstances section 33(5)(d) would apply. If that was the issue that arose on the facts I would have no difficulty in deciding this case. But in making the award in this case the Collector, it is clear to me approached the valuation of this property on the market value, and to arrive at the market value he used comparables, and in using comparables he specifically ignored this particular sale. In the annexure to the award there is a note that the sale in respect of 80 Cecil Street is not relied upon as it was an

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* Paragraph "d" of the grounds of award reads:

"d The calculation to arrive at the market value is:

Lot 16-2 TS II		
Land & Building		
87.79 sq m @ $581/- psm.		$51,005.99
	Say:	$51,000.00
Less: 5% [under Section 33(5)(c)]		$ 2,550.00
	Nett:	$48,450.00
Lot 18 TS II		
Land & Building		
82.41 sq m @ $619/- psm.		$51,011.79
	Say:	$51,000.00
Less: 5% [under Section 33(5)(c)]		$ 2,550.00
	Nett:	$48,450.00

Note: i TS II Lot 16-2 was purchased by the appellants from M/s British & Malayan Trustees Ltd. for $40,000/- (subject to tenancy) or $455.63 psm. ($42.33 psf). The date of contract was 27 June 1972 and the date of transfer, 8 September 1972.

ii TS II Lot 18 was purchased by the appellants from Mr. Lim Chong Tick & 5 others for $51,000/- (subject to tenancies) or $618.91 psm. ($57.50 psf.). The date of contract was 28 May 75 and the date of transfer, 31 May 1975. This was an internal transfer between related parties."